

## REMARKS

This response is to the action mailed in the above-referenced case on May 22, 2008, made final. Claims 31-36, 38-47 and 49-52 are presented for examination.

### **Merit rejection under §35 U.S.C. 103(a)**

Claims 31-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eldering (US 6,820,277) further in view of Saylor et al. (US 6,707,889).

#### **Examiner's rejection:**

Claims 31-52 are rejected under 35 U. S. C. 103(a) as being unpatentable over Eldering (US 6,820,277) further in view of Saylor et al. (US 6,707,889).

Regarding claims 31 and 42, Eldering teaches receiving advertisements from participating advertisers at an advertisement managing server, and storing the advertisements associated with the advertisers in a data repository (col. 11 lines 20-47); receiving bid data over the network from participating advertisers for playing of one or more of the audio advertisements determining whether the bid data is satisfactory to one or more of the participating services (col. 8 line 63 to col. 9 line 10); and upon the bid data being determined satisfactory, associating the bid data and identity of the accepting services with the appropriate advertisements in the data repository (see col. 9 lines 4-11); Eldering does not teach and upon receiving notice of a call to one of the accepting telephone services, retrieving an appropriate ad accepted by that telephone service, and providing the retrieved advertisement to the telephone service to be played as audio to the caller. Saylor teaches generating revenue by charging advertisers for including their advertisement content with the Vpage and so users may access the system for free of charge. Saylor teaches the charge may be a flat fee for a period of time, a fee for each user for whom the VAd is played or otherwise (see col. 7 lines 8- 51). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to

allow the advertisers of Saylor to bid for the placement of advertisement, as in Eldering so the advertisers of Saylor can bid for the highest price they are willing to pay for the ad placement and the service provide can select the advertiser with the highest bidder.

**Applicant's response:**

Applicant herein amends independent claims 31 and 42 to positively recite that a host advertising management server actually negotiates ad usage, matching ads submitted by a plurality of advertisers with a plurality of participating telephone service providers. Applicant presents claim 31, as amended, below:

31. (Currently amended) A method for advertising to users of telephone services, comprising the steps of:

- receiving advertisements from participating advertisers at an advertisement managing server, and storing the advertisements associated with the advertisers in a data repository;

- receiving bid data over the network from participating advertisers for playing of one or more of the audio advertisements to callers to at least one of a plurality of participating telephone service providers;

- determining whether the bid data is satisfactory to at least one of the of the participating telephone service providers; and

- upon the bid data being determined satisfactory by at least one of the service providers, associating the bid data and identity of the accepting telephone service provider with the appropriate advertisements in the data repository; and

- upon receiving notice of a call to one of the accepting telephone service providers, accessing rules for associating data about the caller, a telephone service associated with the call, the available advertisements and the received bids to select and retrieve an appropriate ad accepted by that telephone provider to best maximize profits for a host of the managing server, and providing the retrieved advertisement to the telephone service provider to be played as audio to the caller.

Applicant points out that the claims have been herein clarified, by amendment, to recite that the advertising management server does not accept or decline bids. Rather, applicant's invention provides bids to the plurality of participating telephony service providers and the **providers** accept or decline the bids. In this manner the advertising management server of applicant's invention serves as an intermediary between a plurality of telephone service providers, receiving calls and providing services to callers and a plurality of advertisers.

Applicant argues that Eldering fails to consider content **providers** in the system, other than providing an interface where they may identify "avails" or opportunities in streaming content where ads may be inserted by module 114 of AMS 100. The content providers do not have communication with AMS 100 in the system of Elderidge wherein they may accept or decline a bid from an advertiser.

Applicant argues that in applicant's invention, the content provider or telephone service provider has much more control over advertising content provided to its callers. Therefore a match is made between a content provider, a subscriber and a bid for an ad from an advertiser.

Applicant also argues that (col. 8 line 63 to col. 9 line 10) of Elderidge, fails to teach receiving bid data over the network from participating advertisers for playing of one or more of the audio advertisements determining whether the bid data is satisfactory to one or more of the participating services, as espoused by the Examiner. In Elderidge, AMS 100 matches the subscriber characteristics with an ad associated with a monetary bid, the ad is then inserted into available network program streaming. Saylor teaches a system of VBooks consisting of VPages, wherein one means of generating revenue for Vpages is to show ads to users who access the VPages in a self contained, proprietary system.

Applicant argues that Eldering and Saylor, either singly or in combination fail to teach; "...Applicant argues that Eldering and Saylor, either singly or in combination fail to teach; "...upon receiving notice of a call to one of the accepting telephone services, accesses specific processing rules which associate data about the caller, the telephone

service, the available advertisements and the received bids, retrieves an appropriate ad accepted by that telephone service provider to best maximize profits for at least a host of the management server, and provides the retrieved advertisement to the telephone service provider to be played as audio to the caller.”

Applicant’s invention teaches that an advertising selection retrieval server 48 selects an audio ad based upon certain predetermined rules. The ad selection rules include: balanced ad usage rules, profit rules (e.g., revenue sharing rules), target customer profile rules, and other selection rules. The balanced ad usage rules ensure that audio ads are played at least a certain amount of times. The profit rules optimize the amount of earnings the operators of the present invention acquire for the playing of the audio ads. For example, the profit rules may indicate that a first audio ad be played more often than a second audio ad when the first audio ad’s financial arrangement is based upon a profit-sharing arrangement, and the second audio ad’s financial arrangement is a set fee arrangement. The target customer profile rules ensure that audio ads that fit a customer profile are played. For example, a jewelry-related audio ad is played for a customer who has requested jewelry-related information. Examples of other selection rules include accounting information (such as whether the advertiser is current in its payments to the operators), application service provider configuration, and content provider configuration.

Eldering merely teaches considering ad linking, wherein an availability module 104 identifies portions of data streams available for ad insertion and selects an ad based on demographics of a user or to match the ad with the content of the program (col. 8, lines 7-18; col. 10, lines 51-54). There is no teaching or suggestion in Eldering using rules to consider combined factors when selecting an ad for insertion such as the service, the user, the ad itself and the received bid in order to maximize profits for the system provider.

Saylor also fails to access rules which consider the individual user, the ad, the service and profit structure when selecting ads for insertion in Vpages. Saylor is limited to teaching the VAd may be selected based on the content requested by the user. (col. 7,

lines 40-42). Applicant believes the Examiner did not adequately respond to the above arguments in the "Response to Arguments" section of the current Office Action.

Applicant has clearly demonstrated above that claim 31, as amended, is patentable over the art of Eldering and Saylor. Independent system claim 42 follows the limitations of system claim 31 and is therefore patentable by the same reasoning as put forward for claim 31. Dependent claims 32-36, 38-41, 43-47 and 49-52 are patentable on their own merits or at least as depended from a patentable claim.

### **Summary**

It is therefore respectfully requested that this application be reconsidered, the claims be allowed, and that this case be passed quickly to issue. If there are any time extensions needed beyond any extension specifically requested with this amendment, such extension of time is hereby requested. If there are any fees due beyond any fees paid with this amendment, authorization is given to deduct such fees from deposit account 50-0534.

Respectfully submitted,  
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